

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

SUN SPECIALIZED HEAVY HAUL,)	
LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 16-CV-491-GKF-PJC
)	
ACE HEAVY HAUL, LLC;)	
MEDALLION TRANSPORT &)	
LOGISTICS, LLC; MEDALLION)	
INTERNATIONAL, LLC; JOHN DOE,)	
individual; and JOHN DOE, corporation,)	
)	
Defendants.)	

OPINION AND ORDER

Before the court is the Motion to Dismiss of defendant Medallion International, LLC (“Medallion International”) [Doc. No. 32]. For the reasons set forth below, Medallion International’s motion is granted.

I. Background

This dispute arises from a contract between plaintiff Sun Specialized Heavy Haul, LLC (“Sun”) and Ace Heavy Haul, LLC (“Ace”). On February 16, 2016, Sun filed suit in Oklahoma state court, naming Ace, Medallion Transport & Logistics, LLC (“Medallion Transport”), and Medallion International as defendants. Sun served Ace and Medallion Transport on July 6, 2016; Medallion International, however, was never served. On July 26, 2016, the case was removed to this court on the basis of diversity jurisdiction. [Doc. No. 2]. Medallion International now moves for dismissal under Fed. R. Civ. P. 12(b)(5). [Doc. No. 32].

II. Legal Standard

28 U.S.C. § 1448 provides that, in case of removal, all unserved defendants shall be served “in the same manner as in cases originally filed in such district court,” *id.*—that is, “within 90 days after the complaint is filed,” Fed. R. Civ. P. 4(m). “Failure to properly serve [a] [d]efendant[] deprives th[e] court of personal jurisdiction,” which is “fatal to the maintenance of an action.” *Hutto v. United States Gov’t*, No. 09-CV-737-JHP-FHM, 2010 WL 2854685, at *3 (N.D. Okla. July 16, 2010). Such a failure is evaluated under a “two-step analysis.” *Womble v. Salt Lake City Corp.*, 84 Fed. App’x 18, 20 (10th Cir. 2003). *First*, the court considers “whether the plaintiff has shown good cause for the failure to effect timely service.” *Quazilbash v. Wells Fargo & Co.*, No. 09-CV-0652-CVE-FHM, 2010 WL 597132, at *1 (N.D. Okla. Feb. 16, 2010) (quotation marks omitted). If shown, “the court must extend the time for service.” *Id. Second*, absent good cause, the court considers “whether the plaintiff should be afforded a permissive extension.” *Id.* (quotation marks omitted). A “grant of additional time remains discretionary with the” court. *Cloyd v. Arthur Andersen & Co.*, 25 F.3d 1056 (Table), 1994 WL 242184, at *2 (10th Cir. 1994).

III. Analysis

This case was removed to federal court on July 26, 2016. [Doc. No. 2]. Under 28 U.S.C. § 1448, Sun had until October 27, 2016 to serve Medallion International, but failed to do so. *See* 28 U.S.C. § 1448. Moreover, no extension of that service period is warranted. Sun offers no basis on which the court could grant a for-cause or permissive extension of the service window. Indeed, it has not responded to Medallion International’s motion whatsoever. Thus, because Sun has not been “‘meticulous in [his] efforts to comply with’” service requirements, *Quazilbash*,

2010 WL 597132, at *1 (quoting *Despain v. Salt Lake Area Metro Gang Unit*, 13 F.3d 1436, 1438 (10th Cir. 1994)), this court lacks jurisdiction. *Hutto*, 2010 WL 2854685, at *3.

WHEREFORE, Medallion International's Motion to Dismiss [Doc. No. 32] is granted.

IT IS SO ORDERED this 16th day of December, 2016.


GREGORY K. FRIZZELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT